



COMMONWEALTH of VIRGINIA

DEPARTMENT OF CONSERVATION AND RECREATION

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November 6, 2006

Elleanore Daub
Department of Environmental Quality
P.O. Box 1105
Richmond, VA 23218

RE: Aquatic Life Use Attainability Analysis Proposal for Straight Creek in Lee County

Dear Ms. Daub:

I am writing in response to the public comment period for the Virginia Coalfields TMDL Group's proposal to conduct an Aquatic Life Use Attainability Analysis (UAA) for Straight Creek in Lee County.

General Comments:

In accordance with 40 CFR 131.10(g) a UAA cannot be conducted to remove or change an existing designated use. An existing use is any use that has actually been attained in a water body on or after November 28, 1975. The subject document provided by the Virginia Coalfields Total Maximum Daily Load Group does not adequately demonstrate that the aquatic life use was not existent in Straight Creek on or after November 28, 1975, so a UAA is unfounded at this point.

The State Water Control Board is seeking comments on the subject document as to whether it constitutes reasonable grounds that attainment of the aquatic life use for Straight Creek is not feasible. There is inadequate cost/benefit information in the document to answer this question. In fact, development of a TMDL implementation plan is the process that would help answer such question and would be the next recommended step.

Other state water quality regulations that address maintaining designated uses include:

§ 62.1-44.117

D. The public welfare and interest of the people of the Commonwealth require the proper development, wise use, conservation and protection of water resources together with protection of land resources, as affected thereby.

VAC 25-260-30. Antidegradation policy

A. All surface waters of the Commonwealth shall be provided one of the following three levels, or tiers, of antidegradation protection. This antidegradation policy shall be applied whenever any activity is proposed that has the potential to affect existing surface water quality.

1. As a minimum, existing instream water uses and the level of water quality necessary to protect the existing uses shall be maintained and protected.

Implementation procedures.

(1) The quality of waters designated in subdivision 3 c of this subsection shall be maintained and protected to prevent permanent or long-term degradation or impairment.

Document Comments:

Page 3 Paragraph 3

...the UAA process considers all factors affecting the stream... This is a misrepresentation of the TMDL process. During the TMDL Study and TMDL implementation plan development processes, all land uses are considered.

Page 5 Paragraph 2

“The Virginia Coalfields TMDL Group anticipates taking the lead role in TMDL Implementation Plan Development.” At this time, Virginia has scoring criteria to rank TMDL Implementation plans and the Commonwealth has not stated a timeframe for the development of the implementation plan. If Virginia Coalfields TMDL Group anticipates taking the lead role in TMDL implementation, they would need to follow all EPA guidance and regulations as well as state requirements in coordination with the Virginia Departments of Environmental Quality, Mines, Minerals and Energy and Conservation and Recreation.

Page 6 Section 2.3 Paragraph 1 and 2

If a designated use is deemed attainable through pollutant control measures, then it cannot be removed. EPA’s regulations provide that “at a minimum, uses are deemed attainable if they can be achieved through imposition of effluent limits required under sections 301(b) and 306 of the Clean Water Act and cost-effective and reasonable best management practices for nonpoint source control.”

Page 9 Section 3.4 Paragraph 2

A human activity that was not mentioned in human caused conditions was the impact that mining has had in changing the physical and chemical conditions in Straight Creek. The statement of relocating buildings, etc. was not stated practices that should be accomplished in order to meet water quality standards.

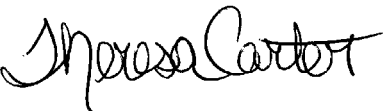
Page 10 Section 3.4.1 and 3.4.2

Stated information from outdated TVA (1965) information.

An implementation plan would be an effective tool to determine a cost benefit analysis. Were there any alternatives suggested by the Virginia Coalfields TMDL group?

Straight Creek is a tributary to the North Fork Powell River just above Pennington Gap and has as many as 37 species of mussels, including six species that the U.S. Fish & Wildlife Service lists as endangered. In addition, 12 of the top 24 cave communities in the Commonwealth are found in this hydrologic unit, which is also the most significant karst area in the state. With these types of environmental resources downstream, all consideration should be given to improving water quality and quality of life for the citizens in the Straight Creek Watershed.

Sincerely,

A handwritten signature in black ink, appearing to read "Theresa Carter". The signature is fluid and cursive, with the first name "Theresa" being more prominent than the last name "Carter".

Theresa Carter
TMDL/Watershed Field Coordinator
Upper Tennessee and Big Sandy Watersheds Office

cc: Daniel Boone SWCD Directors and Staff
Tony Pane, DCR, Conservation District Coordinator
Kelly Miller, DCR, Upper Tennessee and Big Sandy Watersheds Regional Manager
Charles Lunsford, Nonpoint Source Modeling & TMDL Development Manager
Allen Newman, DEQ, Water Permit and Planning Manager